

### REMARKS

The Applicant's undersigned Attorney thanks the Examiner for a kind and thorough review of the Application.

Applicant has appropriately amended the claims to address the Examiner's informality rejections.

None of the art of record teaches or discloses a stud cutter, teaches or discloses a cutter having a stud reception member, or even addresses or concerns itself with the problems of cutting studs (see the background section of the pending application). Hence, the cited art is non-analogous art.

Particularly, the term "stud" is defined in The American Heritage Dictionary of The English Language, published by The Houghton Mifflin Company, to mean "an upright post in the framework of a wall for supporting sheets of lath, wall board, or the like". In accordance with this understanding, the specification of the pending application discusses such stud members (e.g., metal stud members) as being used to construct "walls and other portions of buildings and various structures" (see for example, lines 6 - 8 of page 1 of the specification).

Bushaw discloses a cigar cutter which does not have a stud reception member and which could never be used to sever a stud member. Similarly, Mendenhall discloses a paper perforator which does not have a stud reception member and which could never be used to sever a stud member. Maillez discloses a food

slicer which does not have a stud reception member and which could never be used to sever a stud member. Miller also discloses a cigar cutter.

In summary, all of the cited art is non-analogous art and is not properly citable against the pending claims. Query, how could a cigar cutter or a "paper hole producer" ever been used to cut a stud?

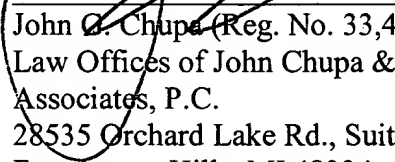
Rather, all of the pending claims relate to a apparatus for cutting a metal stud and there is no teaching or disclosure, anywhere within the cited art of the need or desire to have a tool cut a metal stud or of any of the disadvantages of cutting a stud using current techniques (see, for example, the "Background of the Invention" section of the pending application).

Further, none of the art of record teaches or discloses the use of a stud reception portion which is disclosed to have "a thickness which is substantially similar to the thickness of a stud member" (lines 7 - 8 of page 4 of the pending application). In fact, a stud would not properly fit within any of these devices/apparatus and they are not configured to cut such a stud.

For these reasons, it is respectfully submitted that the pending claims are all allowable over the art of record and such allowance is requested. If the Examiner has any further

questions, the Examiner is invited to call Applicant's undersigned attorney at (248)-324-7787. An affidavit from the inventor is attached which details the non-obvious nature of the inventions and details why the claims are patentably distinct from the prior art of record.

Respectfully submitted,



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**CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8**

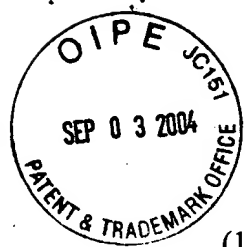
I hereby certify that the foregoing Response to Notice of Abandonment is being deposited with the United States Postal Service in an envelope as First Class Mail addressed to the Commissioner for Patents and Trademarks, P.O. BOX 1450, Alexandria, VA 22313-1450 on this 3<sup>rd</sup> day of September 2004.

By: \_\_\_\_\_

Alina Tolkachier

For: \_\_\_\_\_

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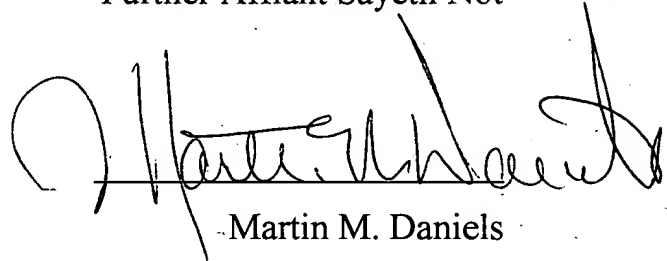


### **Affidavit of Martin Daniels**

- (1) My name is Martin Daniels and I reside at 29226 Lyon Oaks Drive, Wixom, MI 48393.
- (2) I have worked in the construction industry for over 18 years and have actually cut and observed the cutting of studs for all of these years.
- (3) A metal stud is a post or a member that is used to form a wall in a building or other structure and to receive and support drywall or other types of material.
- (4) Traditionally, the metal studs have been delivered to a jobsite or building site from a manufacturer and these delivered studs have traditionally been over ten feet long.
- (5) Most structures that I have been involved with require a metal stud to be only about eight feet long (i.e., the distance from the floor to the ceiling of these respective structures). Hence, the delivered studs must be cut or severed to accommodate this required height.
- (6) It is not very easy to cut these metal studs. First they are very heavy and very long (longer than a normal man and weighing over thirty pounds each).
- (7) Traditionally, the only way to cut these metal studs was to use an electrically powered device which produced dangerous slivers or fragments. Not only were these fragments dangerous, but they polluted the environment.
- (8) I discovered that one could do away with the traditional metal cutting approach if one could find a way to truly stabilize the metal stud while it was being cut (i.e., the weight and length of the stud made it very difficult to stabilize) and if one could develop a way to minimize the strength required to cut the stud.

(9) Unexpectedly, I discovered that the stud could be stabilized upon a support member which had about the same thickness of the stud and that a relatively long serpentine handle could be used to control a pair of cutters which could selectively cut the stabilized stud and this handle allowed the cutting to occur with a minimum of effort. Many of my colleagues have shown great interest in my invention and it has been a good success. People could not believe how easy it is to use.

Further Affiant Sayeth Not

  
Martin M. Daniels

